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No. 82-1383.

**In the
Supreme Court of the United States.**

OCTOBER TERM, 1982.

WILLIAM J. CINTOLO,
PETITIONER,

v.

UNITED STATES OF AMERICA AND
THE HONORABLE ANDREW A. CAFFREY,
CHIEF JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT.

**Supplementation to Petitioner's Reply to
United States' Brief in Opposition.**

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Table of Authorities Cited.

CASES.

United States v. Nightingale, 703 F.2d 17 (1983)	1, 2
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MISCELLANEOUS.

Schaefer, Reducing Circuit Conflicts, 69 ABA Journal 452 (April, 1983)	4
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Petitioner,

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THE HONORABLE ANDREW A. CAFFREY,
CHIEF JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS,
Respondents,

SUPPLEMENTATION TO PETITIONER'S REPLY
TO RESPONDENT'S BRIEF IN OPPOSITION

On March 25, 1983 the United States Court of Appeals for the First Circuit decided *United States v. Nightingale*, 703 F.2d 17, the publication of which was in the May 9, 1983 issue of the Federal Reporter 2nd temporary edition, which in turn reached Plaintiff's counsel in the ordinary course of mail delivery on May 16, 1983. The case first came to his attention at that time.

On page 6 of its brief, Respondent states:

We also have been informed, however, that Orlandella refused to testify on the ground, *inter alia*, that she did not have the assistance of counsel of her choice, since petitioner was disqualified. Contempt proceedings in connection with Orlandella's refusal to testify have not yet been scheduled. If she is held in contempt, under the First Circuit's decision in *In re Benjamin*, she may challenge the disqualification order on an appeal from the order holding her in contempt. There accordingly is no need for this Court to grant certiorari in order to ensure review of the disqualification issue on the merits.

The holding of *Nightingale*, *supra*, 18-19, that a witness's good faith willingness to testify if the order of the District Court compelling testimony is upheld by the Court of Appeals is no defense to a *criminal* contempt proceeding to punish re-

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fusal to obey the District Court's order before the order is upheld, forces every witness who would wish to have appellate review of an order disqualifying his attorney to become a "riverboat" gambler and a rather desperate one at that. What witnesses are likely to play for such stakes, however great this loyalty to retained counsel? Therefore, if the holding of the Court below in the present case that orders of disqualification are unappealable is permitted to stand, it means, effectively, that judicial review of orders of disqualification in the First Circuit is a meaningless concept, whereas in the circuits whose cases are discussed on page 12 of the Petition, it is matter of right.

Such utter inconsistency in application of basic legal principles is repugnant to a *Federal* system of law, see

4.

Schaefer, Reducing Circuit Conflicts, 69ABA
Journal 452, 453-455 (April, 1983), and
strongly militates in favor of granting the
present petition for certiorari.

Respectfully submitted,

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